

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2001-398

APRIL TERM, 2002

State of Vermont

v.

James O. Soden

}	APPEALED FROM:
}	
}	District Court of Vermont, Unit No. 3,
}	Caledonia Circuit
}	
}	DOCKET NO. 35-6-01 Cacs
}	
}	Trial Judge: Mark J. Keller
}	

In the above-entitled cause, the Clerk will enter:

Defendant appeals the civil suspension of his driver's license, arguing that the district court erred in concluding that the arresting officer had a reasonable basis to believe that defendant was driving while intoxicated (DWI). We affirm.

Defendant was stopped for speeding and eventually processed for DWI on the evening of June 8, 2001. After speaking to an attorney, defendant agreed to take a breath test, which revealed a blood-alcohol level above the legal limit. At the civil suspension hearing, defense counsel relied upon a discrepancy in times recorded in different documents to argue that either the breath test or the stop was invalid. The arresting officer's affidavit and incident report indicated that the stop had occurred at 8:43 p.m., while the speeding ticket indicated that the officer had checked his radar unit at 8:41 p.m. and made the stop at 9:51 p.m. Defense counsel argued that if the stop occurred at 9:51 p.m, then the officer could not have observed defendant for fifteen minutes before administering the breath test, and that if the stop occurred at 8:43 p.m., the officer could not have had enough time to check his radar unit before stopping defendant. The court rejected this argument, finding that the officer had a reasonable basis for the stop, which occurred at 8:43 p.m., and that the officer observed defendant for fifteen minutes before administering the breath test.

Here on appeal, defendant renews that same argument raised before the trial court. We conclude that there was ample evidence to support the court's finding that the stop occurred at 8:43 p.m., and that the later time, as the arresting officer testified, was either a mistake or the time the ticket was written at the police station. The other times recorded by the officer, as well as the time recorded by the dispatcher, indicate that the stop occurred at approximately 8:43 p.m. Further, defendant's claim that the officer could not have checked the radar and stopped defendant within a two-minute period is unavailing. The officer testified that he checked the radar unit before making the stop, and that doing so took less than five minutes. He also testified that his stop of defendant was his first of the evening and occurred very shortly after he set up the radar unit. Finally, he testified that defendant appeared to be traveling at an excessive rate of speed, and that the radar clocked defendant at 56 mph, 21 mph above the posted speed limit. Thus, there was evidence to support the court's finding that the stop was reasonable. See Brouha v. Postman, 145 Vt. 449, 451 (1985) (trial court's findings will be set aside only when, taking evidence in light most favorable to prevailing party and excluding effects of modifying evidence, findings are clearly erroneous; even when evidence is conflicting, findings will be set aside only if contrary proof is so overwhelming that there is no reasonable basis to support them).

**Affirmed.**

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice